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P NEWSLETTER



Information and Privacy Commissioner / Ontario

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Winter 1990

Commissioner's Message

January is an ideal month for us to reflect on the successes of the past year, as we plan to meet the challenges that the new year will present. The most recent development that presents a major challenge is the proclamation of the *Municipal Freedom of Information and Protection of Privacy Act* and the amendments to Ontario's *Freedom of Information and Protection of Privacy Act*.

The *Municipal Freedom of Information and Protection of Privacy Act, 1989* was unanimously enacted on December 14, 1989, one full year ahead of the implementation date. As a Bill, it moved quickly through the Ontario Legislature: First Reading on July 20, 1989 followed by Second Reading on October 10.

We are very pleased that the *Municipal Freedom of Information and Protection of Privacy Act* has been modified to take into account the particular circumstances of municipal corporations and local boards. As we see it, two important distinctions are made in the *Act*: "head" is defined in a purely municipal context; and "draft by-laws", as opposed to "cabinet records", are deemed an exemption under the *Act*.

The *Freedom of Information and Protection of Privacy Amendment Act, 1989* amends certain sections of the provincial *Act*, specifically sections 17 and 67. These amendments will be discussed further in a future issue of this newsletter.

1989 has been a particularly successful year for our agency. We succeeded in issuing 102 orders involving 118 appeals, and based on a preliminary review our Ap-

peals Officers succeeded in resolving 244 other appeals through mediation.

During the year, we also issued two policy initiatives for provincial government offices subject to the *Freedom of Information and Protection of Privacy Act* concerning the use of facsimile machines, and the treatment of HIV/AIDS-related personal information in the workplace.

In June, we issued "Guidelines on Facsimile Transmission Security". The document addresses the use of facsimile machines and encourages security measures. It recommends follow-through procedures and provides guidance on the proper location and operation of the fax machine in an office. Targeted primarily at provincial government ministries and agencies who are subject to the *Act*, it discourages the transmission by fax of personal information and exempt records.

To the best of our knowledge, this initiative is the first in North America to address the broader privacy issues to be considered when using facsimile machines. The response has been overwhelmingly favourable. If you have not already obtained a copy and would like one, please contact this office.

The second policy initiative, issued in December by our office, is entitled "HIV/AIDS in the Workplace". The contents of this initiative, with particular emphasis on 12 workplace privacy principles addressing this sensitive topic, are detailed in this issue's feature article.

Our plans for 1990 include hosting the Second Annual "Privacy Summit" - with representatives from the federal and Quebec jurisdictions - and implementation of an office reorganization in preparation for the extension of freedom of information and protection of privacy legislation to local government agencies.

In February, I will host the Second Annual "Privacy Summit". In attendance will be John Grace, Privacy Commissioner of Canada, Jacques O'Bready, President of the Quebec Commission, and representatives from all three of our offices. The agenda will include several timely privacy issues, and I hope to share the highlights of the summit in the April issue of this newsletter.

Plans are underway for our office's reorganization and expansion. As of 1991 we will be serving 3,000 local government agencies in addition to provincial ministries and agencies and we want to be sure that our organizational structure will allow us to meet these new demands.

I consider 1989 to have been a particularly successful year here at the Office of the Information and Privacy Commissioner as well as for those involved in the administration of freedom of information and protection of privacy legislation across the province. I would like to take this opportunity to thank the staff at my office, our colleagues at the Freedom of Information and Privacy Branch, Management Board of Cabinet, and all the Co-ordinators across the province for their continued assistance and cooperation.



The Information & Privacy Commissioner Studies AIDS

The occurrence of HIV/AIDS in our society -- a deadly disease with no vaccine or known cure -- has raised a series of profound dilemmas. Whether the dilemmas are ethical, legal, medical or social, a fundamental issue that arises is how to deal with sensitive HIV/AIDS-related personal information. The concerns raised by employers, employees and those infected with HIV/AIDS are numerous: they range from questions about HIV/AIDS and how it is transmitted, to whether employers and fellow employees need to know the status of an HIV/AIDS infected person's health.

One of the Information and Privacy Commissioner's responsibilities under the *Freedom of Information and Protection of Privacy Act, 1987* is to ensure that personal information held by government about any individual is adequately protected. The protection of an individual's personal information about HIV/AIDS is critical given society's misconceptions about HIV/AIDS and the possible consequences for the individual concerned if HIV/AIDS-related personal information is misused.

Policy development on HIV/AIDS as it relates to the *Act* is ongoing at the Commissioner's office. In December 1989, the office released "HIV/AIDS in the Workplace", the first of two policy initiatives addressing HIV/AIDS. Based on the workplace principles recommended in this report, the Commissioner's office has adopted its own workplace policy on HIV/AIDS.

"HIV/AIDS in the Workplace" recommends several privacy principles for employers and employees to follow when dealing with HIV/AIDS-related personal information. The workplace policies

indicate that the *Act* neither provides grounds for the mandatory collection of HIV/AIDS-related personal information; nor requires employees to provide such information as a condition of securing or continuing employment. The policies encourage employers to establish education programs in the workplace: provide information on how the disease is transmitted; warn of the possible consequences of improper collection, use and disclosure of HIV/AIDS-related personal information; and advise of the protection provided by the *Act* for such personal information.

The report recommends that HIV/AIDS-related personal information volunteered by the infected person or by a third party should not generally be retained. If collected, it is imperative that strict security measures be taken to ensure the continued confidentiality of the information.

The report urges organizations who must collect HIV/AIDS-related personal information to permit the affected person access to his or her records, and the ability to challenge their accuracy if necessary.

The remaining privacy principles cited in the report deal with the *Act* and how the *Act* restricts the use and disclosure of HIV/AIDS-related personal information.

The report also discusses at length the ways in which HIV is transmitted and makes it clear that it cannot be transmitted by casual contact. Any fears employees may have of working with an HIV/AIDS infected person should be allayed, as normal workplace conditions do not provide an environment for HIV transmission. The report also explains the adverse consequences of disclosing HIV/

AIDS-related personal information, and shows why such information should be treated with utmost confidentiality.

"HIV/AIDS in the Workplace" is primarily intended for ministries, agencies, boards and commissions of the Ontario Government. They are encouraged to adopt the principles as part of their general workplace policies on HIV/AIDS. The report can, however, be adapted for use by the private sector.

The privacy principles outlined in "HIV/AIDS in the Workplace" are the basis for the workplace policy adopted by the Commissioner's office. The IPC Workplace Policy has been submitted to the Ontario government's Interministerial Working Group on AIDS for formal approval.

In 1990, the Commissioner's office will release a second policy initiative discussing HIV/AIDS. This report will address the broader privacy issues relating to the collection, use and disclosure of HIV/AIDS-related information. It will also discuss this office's policy recommendations on anonymous testing, mandatory reporting, contact tracing and partner notification.

The Information and Privacy Commissioner's mandate is to ensure adequate protection of an individual's personal information that is held by government. Considering the extremely sensitive nature of HIV/AIDS-related personal information and the possible adverse consequences of misuse of that information for the individual concerned, this office will continue to monitor and study the issue of HIV/AIDS-related personal information.



Book Review

The publication of *Protecting Privacy in Surveillance Societies*, by David H. Flaherty, Professor of History and Law at the University of Western Ontario, and an international expert on data protection and privacy, is highly welcome. The book's 483 pages discuss and analyze the status of data protection and privacy laws in West Germany, Sweden, France, Canada, and the United States. Professor Flaherty comprehensively details how each country has dealt with the threats posed to informational privacy by the increasing use of new technologies, especially computers, in the public and private sectors.

The book's contention is that the advent of 'surveillance societies', in which all of one's personal information is collected and used by governments, and by just

about everyone else, is very real. In Flaherty's words: "Western industrial societies run the increasing risk of becoming - or may already be - surveillance societies, as one component of being information societies."

Despite the trend toward government deregulation of most types of public and private activity, Flaherty argues that we need more rather than less privacy and data protection laws. He sees government agencies, as the "leading invaders of the personal privacy of citizens, since they maintain systems with the largest scope and most numerous records."

In response, the book argues that regulatory schemes must be strengthened, so as not to give an illusion of surveillance control. Among other things, Flaherty

recommends that "data protectors ... pursue audits with vigor in order to monitor compliance with fair information practices." He feels so strongly about the danger of paying only lip-service to privacy issues that he recommends that privacy protection be enshrined as a constitutional right.

The merit of the book is that it provides both the details of how data protection schemes operate in the major democracies and, at the same time, raises fundamental questions about our prospects for privacy as we head toward the 21st century.

John Eichmanis

(*The book is published by the University of North Carolina Press, 1989.*)

Upcoming Seminars and Conferences

April 23 and 24, 1990

ACCESS '90: Focussing on Daily Access/Privacy Issues, to be held in Ottawa. This two-day conference is being presented by The Canadian Access and Privacy Association and organized by Riley Information Services Inc. For details, contact: Tom Riley, Riley Information Services, P.O. Box 261, Station F, Toronto, Ontario M4Y 2L5. Phone: (416) 593-7352

May 18, 1990

A one-day seminar, to be held in Toronto, for local government agencies, covering freedom of information and protection of privacy legislation. For details, contact: EDU-LAW Consulting Services Limited, 1 Gloucester Street, Suite 109B, Toronto, Ontario M4Y 1L8. Phone: (416) 323-0358.

If you wish to advise readers of an upcoming seminar or conference covering freedom of information and privacy issues, please contact our office.

New Procedures for Appeals

At the inception of the *Freedom of Information and Protection of Privacy Act, 1987*, the IPC Appeals Department was faced with the simultaneous challenges of coping with a large number of appeals, and with developing procedures as to how these appeals would be processed. After two years we are still faced with appeals which introduce novel circumstances; however, we have devised a general procedure for handling appeals. Modifications occur to suit the circumstances of the wide range of issues that arise under the *Act*, but certain steps occur in all appeals.

On November 27, 1989 the IPC Appeals Department began sending an Outline of Procedure used by the Commissioner's office in the processing of an appeal to everyone who receives a Notice of Appeal. This outline is intended to give parties to an appeal a general overview of the events that take place in most appeals.

In addition to the Outline, institutions will find a two-page Guideline attached to their Notices of Appeal. The Guideline reminds institutions that the Appeals Department will routinely need to see copies of records to which full access has been refused, as well as relevant correspondence. It also advises of the information which the Appeals Department (and eventually the Commissioner) will need about the institution's decision and how it applies to the particular records concerned in the appeal.

It is hoped that routine business connected with appeals will run more smoothly with the Outline and Guideline, as they provide an overview of what is to be generally expected. Comments on their utility are welcomed.

Judith Keene

Information

What You Should Know about Freedom of Information and Protection of Privacy

As part of the Information and Privacy Commissioner's public education program, a package called: "What You Should Know about Freedom of Information and Protection of Privacy" will be released in February.

The package is made up of three brochures: one which provides general information on freedom of information and protection of privacy in Ontario; one which addresses privacy issues; and a detailed booklet for those interested in more than basic information. Both the provincial and municipal applications of freedom of information and privacy legislation will be addressed.

"The Balancing Act"

"The Balancing Act", a 15-minute video in VHS format, explains the rights and protections available under the *Freedom of Information and Protection of Privacy Act, 1987*. It also details the intent and philosophy of the *Act* as well as the role and function of the Information and Privacy Commissioner.

Please contact the Office of the Information and Privacy Commissioner, address and telephone listed below, for complimentary copies of the brochures and the video.

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If you have any comments regarding the Newsletter or wish to be added to the mailing list, contact:

Monica Zeller, Communications Officer
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario
M5S 2V1

Telephone: (416) 326-3333
Toll Free: 1-800-387-0073
Fax: (416) 965-2983

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